

November 28, 1955

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CONCORD, N.H.

Walter G. White, Chairman  
N. H. Water Resources Board  
State House Annex  
Concord, New Hampshire

Dear Mr. White:

In two communications under date of November 2, 1955, you make certain inquiries with respect to RSA 491:14 as amended by Laws 1955, C. 327.

Your first question deals with the interpretation to be given the word "appurtenances" as it appears in the term "the dam and any appurtenances thereto" as used in the statute cited. You specifically wish to know if there are included within the meaning (1) the land acquired by the Board for the purpose of storage and flowage of water and (2) the land and buildings owned by the Board for the purpose of housing the operator of the dam and the equipment used in connection with the dam's operation and maintenance. We reply in the affirmative.

The word "appurtenance" may be of broad significance and include anything which pertains to or is related to another thing designated as the principal. In such broad sense all of the property owned by the Board in connection with its ownership and use of the dam might be deemed appurtenant to the dam. Such cannot have been the meaning of the Legislature in its enactment, since in such case the provision for the separate treatment of "all property and rights acquired by the corporation" would be meaningless. In such circumstances, the burden of initial action being upon the Board, you are entitled to adopt such interpretation of the legislative language as you believe to reflect its intent. An interpretation whereby the term appurtenances to the dam should be held to include all those things necessary and convenient to the operation of the dam is entirely proper. This would include the land necessary to storage and discharge of water held by the dam, buildings, including the caretaker's dwelling, reasonably necessary to be used in connection with the operation and maintenance of the dam, and all machinery used upon or in the dam itself; in short, all property so closely associated with the dam that the successful operation of the dam is dependent upon it.

Walter G. White

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In such circumstances the property included under the heading "all property and rights acquired by the corporation" must refer to the remainder of the property owned by the Board in the several towns. This will include, generally, the land around the reservoir, excepting so much of it as is included with the appurtenances.

Your second inquiry relates to the protection of the rights of the Board in making its payment to the several towns. It is noted that payment is to be made on or before December 1st of each year.

Payments with respect to "all property and rights acquired by the corporation" are based upon the average assessed valuation thereof over the period of five years prior to acquisition, unless a general revaluation has been made. To the extent that included within this classification there are certain parcels acquired by the Board on which there were during the requisite period actual valuations, you are required to use such valuations if they are available to you. With respect to property acquired which did not in the specified years constitute separately assessed parcels, the duty is upon you in the first instance to determine a reasonable valuation. With the determination so made and using the current tax rates, you may calculate the Board's tax liability and make tender to the several towns.

The sum of \$12,500 to be paid on account of the dam and its appurtenances is to be apportioned to the towns of Blatching and Clarksville "in the same ratio that the value of that portion of said dam and any appurtenances thereto located in each town bears to the total value of said dam and any appurtenances thereto as determined by the tax assessors of said towns." (Emphasis supplied). The sum is fixed and the property to which it relates is determinable in accordance with the principles set forth above. You cannot, however, properly make payment until a further act is done - and that is the act of the assessors in apportioning between the towns or each its rightful share. It is the opinion of this office that the rights of the Board will be adequately protected with respect to this payment if you apprise the Selectmen of the several towns that the Board is prepared to make its payment in accordance with the law and in accordance with their instructions concerning apportionment.

Very truly yours,

Arthur E. Bean, Jr.  
Assistant Attorney General

WEW/aml